

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-219724

**DATE:** October 23, 1985

**MATTER OF:** Messinger Bearings Corporations

**DIGEST:**

Dissolution of a small business set-aside and solicitation on an unrestricted basis is not improper where the contracting officer reasonably determined that the prices submitted by eligible small businesses were unreasonable. In considering price reasonableness under a small business set-aside, the contracting officer has discretion in deciding which factors to consider, and a price submitted by an otherwise ineligible large business properly may be considered.

Messinger Bearings Corporation (MBC) protests the dissolution of the small business set-aside restriction under solicitation No. DLA500-85-R-0254 issued by the Defense Logistics Agency (DLA) for ball bearings. MBC, a small business, asserts that the dissolution was improper because it resulted from a determination that the small business offerors' prices were unreasonable compared with an offer submitted by Kaydon Corporation (Kaydon), a large business, whose offer should not have been considered.

We find the protest without merit.

The solicitation was issued on December 24, 1984, as a total small business set-aside. Only two eligible approved source manufacturers were listed on the solicitation because DLA believed that it lacked either the data or the rights in data to purchase the item on a competitive basis. In response to a synopsis in the Commerce Business Daily, Kaydon furnished technical material showing that it was an approved source by the original equipment manufacturer and requesting that it be listed as an approved source.

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On January 23, 1985, the closing date for receipt of proposals, DLA received four offers. Kaydon submitted the low offer at a price less than one-half that of the next low offeror. Subsequently, DLA determined that it possessed drawings for the part and that the solicitation could be issued on a more competitive "source controlled data" basis, and that Kaydon qualified as an acceptable source of supply. On May 15, 1985, DLA amended the solicitation, extending the closing date to May 31, 1985, and changing it to a source controlled status, with Kaydon listed as an approved source.

DLA indicates that at the time it issued this amendment it overlooked the fact that the solicitation was a small business set-aside and Kaydon is a large business. DLA states that if not for this oversight, in view of the excessive prices received from the small business offerors in comparison to Kaydon's price, it would have taken steps to dissolve the set-aside at that time.

On May 31, 1985, three offers were received. Kaydon's low offer was again at a price less than one-half that of the low small business offeror, MBC. In evaluating the offers, the DLA contracting officer realized that the solicitation was a total small business set-aside. Based on the fact that the small business offers were all more than twice as high as Kaydon's, the contracting officer determined pursuant to Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.506(a) (1984), that award to a small business would be detrimental to the public interest because of price unreasonableness. The contracting officer, by amendment issued July 16, 1985, made the procurement unrestricted, and the date for receipt of offers was extended to July 31, 1985.

MBC protests to our Office that DLA's conduct of the procurement was "unfair and unethical," because a nonresponsive offer from a large business was considered in determining the reasonableness of the small business prices instead of the price history for the part and MBC's price reduction of approximately one-third from MBC's first offer to its second offer. MBC also questions why DLA did not request another offer restricted to small businesses before dissolving the set-aside on the basis of price unreasonableness to enable the small business offerors to reduce their prices.

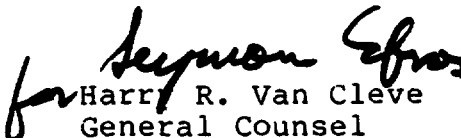
Here, the contracting officer made a determination based on unreasonable price in comparison to a price submitted by a large business. A determination of price reasonableness for a small business set-aside is within the discretion of the procuring agency, and we will not

disturb such a determination unless it is clearly unreasonable or there is a showing of possible fraud or bad faith on the part of the contracting officer. Warren/Dielectric Communications, B-212609, Jan. 26, 1984, 84-1 C.P.D. ¶ 121. In making this determination, the contracting officer may consider pricing history or other relevant factors revealed by the bidding, including consideration of the price submitted by an otherwise ineligible large business. Flagg Integrated Systems Technology, B-214153, Aug. 24, 1984, 84-2 C.P.D. ¶ 221. Moreover, we have found a small business concern's price that was 7.2 percent higher than one used for comparison purposes properly to have been found unreasonable. Saratoga Industries--Reconsideration, B-202698.2, Jan. 2, 1982, 82-1 C.P.D. ¶ 47. Accordingly, since MBC's price was more than twice that of the large business price, we cannot find that DLA abused its discretion in dissolving the set-aside.

To the extent that MBC is suggesting bad faith on the part of DLA in the conduct of the procurement, it has provided no specific basis for such a finding. Rather, MBC has merely asserted that the procurement was handled in an "unfair and unethical" manner apparently based on its belief that the large business offer was improperly considered. As indicated above, the contracting officer may properly consider such an offer in determining price reasonableness.

Finally, MBC's argument that DLA should have conducted further negotiations with the small business offerors and permitted them to offer again on a set-aside is without merit. MBC was aware during the various stages of the procurement whom its competition was and given three opportunities to submit its best offer. Initially, MBC knew the competition was only between itself and the other approved source. The first amendment added Kaydon as an approved source and the second amendment dissolved the set-aside. Each change in the solicitation was followed by another opportunity for best and final offers. There was no obligation on DLA to specifically negotiate with MBC to permit MBC another opportunity to submit a reasonable price.

The protest is denied.

  
for Harry R. Van Cleve  
General Counsel